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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

TATIANA KOROLSHTEYN, on  
behalf of herself and all others similarly  
situated,

Plaintiff,

v.

COSTCO WHOLESALE  
CORPORATION and NBTY, INC.,  
Defendants.

PAIGE PETKEVICIUS, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

NBTY, INC., a Delaware Corporation;  
NATURE'S BOUNTY, INC., a New  
York Corporation; REXALL  
SUNDOWN, INC., a Florida  
Corporation,

Defendants.

Case No.: 3:15-cv-0709-CAB-RBB  
Case No. 14-CV-02616-CAB-RBB

**CLASS ACTION**

**MOTION TO STRIKE  
DECLARATION OF DR. SUSAN  
MITMESSER IN OPPOSITION TO  
PLAINTIFFS' MOTIONS FOR CLASS  
CERTIFICATION**

Date: TBD  
Time: TBD  
Judge: Hon. Cathy Ann Bencivengo  
Ctmm: 4C

**PER CHAMBERS RULES, NO ORAL  
ARGUMENT UNLESS SEPARATELY  
ORDERED BY THE COURT**

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that, in connection with the motion for class certification in the above-referenced matter, Plaintiffs Paige Petkevicius and Tatiana Korolshteyn ("Plaintiffs") will move this Court pursuant to Federal Rule of Civil Procedure 37(c) for an order: striking the declaration of Dr. Susan Mitmesser in Opposition to Plaintiff's Motion for Class Certification (ECF No. 112-1) and the exhibits attached thereto (ECF No. 112-2); prohibiting any reliance thereon in connection with any motion or, if necessary, at the trial in this matter; and ordering Defendants to reimburse Plaintiffs for their fees and expenses incurred with bringing this motion.

The bases for this motion, which is more fully set forth in the accompanying Memorandum and are incorporated herein, are that: 1) Defendants failed to provide the requisite Rule 26 expert disclosures for Dr. Mitmesser; and 2) the Declaration contains previously undisclosed expert opinions, as well as citation to studies not previously identified pursuant to Plaintiffs' 30(b)(6) deposition notice.

This motion is based on this Notice, the Memorandum of Points and Authorities filed herewith, Reply in Support of Plaintiffs' Motion for Class Certification, the Declaration of Patricia N. Syverson, the records and pleadings on file herein, any matter of which the Court may take judicial notice, and on such other evidence as may be presented in the hearing on this matter.

Dated: January 6, 2017

BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.

/s/ Patricia N. Syverson

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I hereby certify that on January 6, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

/s/ Patricia N. Syverson